IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7005 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANLAL KESHAVLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7005 of 2001

MR PK JANI for Petitioner No. 1

Mr Siraj Gori, AGP for Respondent No. 1-2

RULE SERVED for Respondent No. 3

MR SK JHAVERI for Respondent No. 4

MS JIRGA D JHAVERI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 10/09/2004

CAV JUDGEMENT

The short facts of the case are that the petitioner was serving as a clerk with respondent No.4-Society and there was some audit objections in the year 1986. On the basis of the said audit objections, one Mr Mevada was appointed as Inquiry Officer and ultimately he submitted report and in the year 1991, the petitioner was called upon to make the payment based on the report of the Inquiry Officer. It appears that the petitioner submitted the reply. The petitioner also preferred revision application before the Additional Registrar who rejected the revision application but simultaneously directed that the amount in question may be recovered from the petitioner by filing suit before the Registrar's Board of Nominee, Mehsana. The respondent-Society preferred Arbitration Suit No.644/94 before the Registrar's Board of Nominee and ultimately on 4.1.1999, the Board of Nominee dismissed the suit on the ground that after the enquiry under section 86 of the Act, the proper procedure to be undertaken would be only under section 93 of the Gujarat Cooperative Societies Act, 1961 (for short, 'the Act') and not under section 96 of the said Act. However, incidentally, some observations were also made regarding the merits on the question of liability. It also appears that the respondent-Society has preferred appeal before the Gujarat State Cooperative Tribunal (for short, 'the tribunal') being appeal No.180 of 2000. It appears that pending the said appeal before the tribunal, the District Registrar issued show cause notice dated 28.2.2001 as to why the liability should not be fixed under section 93 of the Act. The petitioner submitted reply to the said show cause notice to the District Registrar and the matter was pending at that stage. It also appears that on 3.4.2001, the District Registrar issued another show cause notice for initiating proceedings under section 147 of the Act for breach of provisions under section 84 (4) of the Act. At that stage, the petitioner has approached this Court by preferring this petition challenging the said show cause notice under section 93 of the said Act as well as the show cause notice for taking action under section 147 of the Act being Annexures 'D' and 'F' respectively.

2. Mr P K Jani, learned counsel appearing for the petitioner relying upon a decision of this Court in the case of Sardar Sahakari Mandli (in Liquidation) v. Natverlal K Shah, reported in (1979) 2 GLR p.626, inter alia, contended that the proceedings under sections 93 and 96 are for all practical purposes parallel proceedings and he submitted that once the decision is rendered under section 96 of the Act by the Registrar's

Board of Nominee and against which the appeal is pending before the tribunal, it is not open to the District Registrar to re-open the issue by initiating proceedings under Section 93 of the Act and, therefore, he further submitted that the impugned action issuing show cause notice and of initiating action under section 93 of the Act is without jurisdiction.

3. Mr S K Jhaveri, learned Sr. Counsel appearing for the respondent-society, on the other hand, submitted that the society has preferred appeal before the tribunal but as such the learned Board of Nominee dismissed the suit on the ground that the proceedings under section 96 of the Act are not competent. During the course of hearing, he also declared before the Court that he has instructions to state that the Society shall withdraw the appeal pending before the tribunal if the proceedings under section 93 of the Act are allowed to continue further. He also stated that this Court may observe simultaneously that the observations made by the learned Nominee would not come in the way of the proceedings under section 93 of the Act. Mr S K Jhaveri, learned Counsel also submitted that uptill now, a decision is not taken by the District Registrar.

4. As per the provisions of Gujarat State Cooperative Societies Act, in course of or as a result of audit under section 84, or an enquiry under section 86 of the Act, if the Registrar is satisfied upon the report under section 86 that any person who has taken part in the organisation or management of the Society or any deceased, or past or present officer of the society has, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasane or breach of trust in relation to the society, proceedings under section 93 can be initiated and investigation can be made regarding the conduct of such persons after framing charge and after giving reasonable opportunity to the person concerned and thereafter the order can be passed requiring such person/s to repay or restore the money or property or any part thereof with interest. It is an admitted position that the suit under section 96 of the Act came to be filed by the Society based on the enquiry report under section 86 of the Act and, therefore, the proper proceedings could be initiated were under section 93 of the Act and, therefore, the Registrar's Board of Nominee, in the judgment and the order dated 4.1.1999 passed in Suit No.644/94, has not committed error in observing that the suit under section 96 of the Act is not proper and the proceedings under section 93 of the Act should have

been initiated. Therefore, when the learned Board of Nominee found that the suit is not maintainable, the other aspects incidentally touching the merits, cannot be said to be a conclusive proof to decide as to whether the Society is entitled to recover the amount in question or the petitioner is liable to pay the amount in question as per the report of the Inquiry Officer or otherwise. Merely because the appeal is pending before the tribunal, the judgment and order of the Board of Nominee cannot be interpreted so as to debar initiation of proceedings under section 93 of the Act. Had it been a case of dismissal of the suit on merits with the proper exercise of the jurisdiction having found by the Registrar's Board of Nominee, the matter might have stood on a different footing. But when the decision is rendered on the ground of want of jurisdiction or non-maintainability of the suit, it cannot be said that the District Registrar cannot initiate proceedings under section 93 of the Act under such circumstances. Even otherwise also, as recorded hereinabove, Mr S K Jhaveri, learned sr.counsel appearing for the concerned Society has declared before the Court that the Society is ready to withdraw the appeal pending before the tribunal and, therefore, there would not be any question of continuing with the proceedings under section 96 as well as under section 93 of the Act simultaneously. When the Society itself has declared before this Court to withdraw the proceedings of the appeal and to accept the judgment of the Nominee on the question of non-maintainability of the suit, no further discussion in this regard would be required.

5. The reliance placed upon the decision of this Court in the case of Sardar Sahakari Mandli v. Natverlal (supra), is ill-founded inasmuch as in the said case, the proceedings under section 93 of the Act were initiated and were concluded and thereafter the proceedings under section 96 of the Act were initiated and it was not the case of decision under section 93 of the Act on the ground that the proceedings are not competent. Therefore, the said decision is of no help to the petitioner.

6. Even otherwise also, the impugned notice at Annexure 'D' is for initiating proceedings under section 93 of the Act and the another show cause notice is for initiating proceedings under section 147 of the Act. The petitioner may raise all contentions which may be available to him in accordance with law save and accept observed hereinabove and, therefore, on that count also, both the impugned notices do not call for any interference by this Court.

8. In view of the above, this petition is dismissed with the observation that the District Registrar will be at liberty to proceed with the impugned show cause notice under section 93 of the Act after the appeal is withdrawn by the said Society as declared before this Court and accordingly reported to the District Registrar.

Subject to the aforesaid observations and directions, Rule discharged. The ad-interim relief granted earlier stands vacated.

[Jayant Patel, J.]

msp